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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/146923

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 28, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on May 07, 2013, at Kenosha, Wisconsin.

The issue for determination is whether assets that led to the denial of backdated institutional Medicaid were available.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Michael D. Sanger  
2741 West Layton Suite 106  
Milwaukee, WI 53221

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Gail Heaslet

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. This appeal was filed on behalf of Petitioner to contest the denial of institutional Medicaid for the months of September and October 2012.
3. The denial of institutional Medicaid for the months of September and October 2012 was because Petitioner owned assets in excess of Medicaid asset limits.
4. The assets the agency determined Petitioner put over the asset limit were life insurance policies with cash value. Those policies were all issued by MetLife and had a cash value of \$11,852.47.
5. Petitioner was found eligible for institutional Medicaid effective November 1, 2012 as the cash value proceeds were received and immediately spent down.
6. Petitioner's POA initiated the surrender process for the cash value of the life policies involved here on August 2, 2012. They delay in the issuance of the cash value was on the part of the insurance company.
7. Petitioner's group size is one.

### **DISCUSSION**

The asset limit for Medicaid purposes for a group of one is \$2000.00 *Medicaid Eligibility Handbook (MEH)*, §39.4.1.

The cash surrender value of life insurance is counted as an asset for Medicaid purposes:

Face value is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or under other special provisions. Cash value means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it.

Count the cash value of all life insurance policies. For persons age 65 or over, blind or disabled, count it only when the total face value of all policies owned by each person exceeds \$1,500. Do this calculation for each EBD person. In determining the face value, do not include any life insurance which has no cash value.

*MEH*, §16.7.5.

Nonetheless, an asset must be available to the Medicaid applicant/recipient to be counted against the asset limit:

#### **16.2.1 Assets Availability Introduction**

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Consider an asset as unavailable if:

1. The [\*member\*](#) lacks the ability to provide legal access to the assets, and
2. No one else can access the assets, and
3. A process has been started to get legal access to the assets.

**or**

When the owner or owner's representative documents that the asset will not be available for 30 days or more.

Use the criteria above to determine whether an asset was available in a backdate month unless an asset is deemed unavailable in the month of application because it will not be available for 30 or more days (considered unavailable in any or all backdate months).

The documents submitted by Petitioner's representative demonstrate the efforts made to surrender the insurance policies involved here. It is apparent that there were barriers to the surrender of the MetLife policies that made them unavailable to Petitioner for more than 30 days. I am, therefore, concluding the policies were not available to Petitioner in September and October 2012 thus institutional Medicaid eligibility for Petitioner should be extended to those months.

### **CONCLUSIONS OF LAW**

That Petitioner's request to have his institutional Medicaid backdated to September and October 2012 should be granted as the assets that led to the denial of that request were not available to Petitioner.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the agency with instructions to take the steps necessary to certify Petitioner for institutional Medicaid coverage for September and October 2012, assuming there are no other bars to that eligibility. This must be done within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that

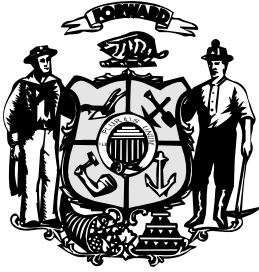
Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 20th day of May, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 20, 2013.

Racine County Department of Human Services  
Division of Health Care Access and Accountability  
[mike@michaelsangerlaw.com](mailto:mike@michaelsangerlaw.com)